

Decision No. C11-0757

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

DOCKET NO. 08A-508T

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IN THE MATTER OF THE APPLICATION OF NNTC WIRELESS COMPANY, LLC, FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER AND ELIGIBLE PROVIDER IN THE STATE OF COLORADO.

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**ORDER ADDRESSING APPLICATION FOR REHEARING,  
REARGUMENT, AND RECONSIDERATION**

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Mailed Date: July 13, 2011

Adopted Date: July 6, 2011

**I. BY THE COMMISSION**

**A. Statement**

1. This matter comes before the Commission for consideration of an application for rehearing, reargument, and reconsideration (RRR) to Decision No. C11-0551 filed on June 13, 2011 by the Colorado Office of Consumer Counsel (OCC). Being fully advised in the matter and consistent with the discussion below, we deny OCC's application with clarification.

**B. Background**

2. On November 14, 2008, NNTC Wireless, LLC (NNTC or Applicant) filed a Verified Application for designation as an Eligible Telecommunications Carrier (ETC) and as an Eligible Provider (EP) in Colorado. The Applicant is a wholly-owned subsidiary of Nucla-Naturita Telephone Company (Nucla-Naturita), which is a rural incumbent local exchange carrier (ILEC).

3. The Commission previously designated Nucla-Naturita an ETC and an EP in its service territory. The ETC designation makes Nucla-Naturita eligible to draw money from the Federal Universal Service (USF) Fund and it currently draws money from the USF Fund. The EP designation makes Nucla-Naturita eligible to draw money from the Colorado High Cost Support Mechanism (CHCSM) Fund and it currently draws money from the CHCSM Fund. NNTC filed its application in order to achieve the same.

4. Staff of the Commission (Staff) and the OCC are the only intervenors in this case. The Commission referred this matter to Administrative Law Judge (ALJ) Mana L. Jennings-Fader, who held an evidentiary hearing. The ALJ issued Recommended Decision No. R11-0218 (Recommended Decision) on March 1, 2011, granting both the ETC and the EP designations, subject to certain conditions.

5. The OCC, Staff, and NNTC timely filed exceptions to the Recommended Decision. The OCC, Staff, and NNTC also filed responses to these exceptions.

6. By Decision No. C11-0551, mailed on May 23, 2011, the Commission granted the exceptions filed by NNTC and denied the exceptions filed by Staff and the OCC.

7. The OCC filed its RRR to Decision No. C11-0551 on June 13, 2011.

**C. Disaggregation as a Condition for ETC Designation**

8. In its RRR, the OCC disagrees with paragraph 19 of Decision No. C11-0551, which overruled the ALJ's conclusion that disaggregation will be a condition for the designation of NNTC as an ETC and EP. Instead, the Commission deferred the issue of whether disaggregation will be required to a future proceeding.

9. The OCC argues that federal law authorizes imposition of conditions when a state commission designates an ETC to ensure that it is in the public interest. The OCC further argues the Commission's decision to overrule the ALJ regarding disaggregation is based, in part, on the erroneous conclusion that NNTC "had no opportunity to address this issue" in this docket. The OCC further states that a review of the evidentiary record discloses that disaggregation was an issue in this matter.

10. The OCC argues the Commission erred in deferring the resolution of this issue. The OCC further argues that the Commission has acknowledged that disaggregation is an issue that it must consider in conjunction with NNTC's ETC and EP designations. The OCC continues its argument by arguing Decision No. C11-0551 raises an issue regarding how the ETC/EP joint application can be deemed to be in the public interest when compliance with disaggregation is not addressed in this proceeding. The OCC argues this creates a practical issue related to when and how this deferred issue will be addressed in some future proceeding. The OCC also argues that deferring this issue to a future docket will also create an administrative inefficiency as well.

11. We are not persuaded by OCC's arguments. We still find that, primarily because the record in this docket does not sufficiently address disaggregation, we will defer the issue of whether disaggregation should be required to a subsequent proceeding. We therefore deny the RRR filed by the OCC on these grounds.

12. However, we agree with the OCC that a clarification is needed in the language of Decision No. C11-0551 regarding the process of granting ETC status to NNTC. Specifically, a clarification is needed regarding the condition of ETC designation based on the redefinition of

Nucla-Naturita's study area to the wire center (or exchange) level and the concurrence of the Federal Communications Commission (FCC) in that redefinition.

13. We find that, in order to address the possibility of creamskimming, Nucla-Naturita must redefine its study area for NNTC to provide service to fewer than all of Nucla-Naturita's wire centers.<sup>1</sup> Nucla-Naturita must make a verified filing with this Commission, as the affected rural ILEC. The filing is necessary: (a) to obtain Commission permission to target federal high-cost support (Rules Regulating Telecommunications Providers, Services, and Products, 4 *Code of Colorado Regulations* (CCR) 723-2-2190(d)); and (b) to obtain a Commission decision that addresses, *inter alia*, any Federal-State Joint Board recommendations concerning redefinition of a rural ILEC's service area (47 *Code of Federal Regulations* (CFR) § 54.207(c)(1)(ii)). Nucla-Naturita may make its filing under Rule 4 CCR 723-2-2190(b) (Path 2) or Rule 4 CCR 723-2-2190(c) (Path 3). The filing must include information that provides an evidentiary basis for a Commission decision or an explanation that satisfies the requirements of 47 CFR § 54.207(c)(1).

14. Nucla-Naturita is not a party to this proceeding. Thus, while the redefinition of Nucla-Naturita's study area is a condition on NNTC's ETC designation in Nucla-Naturita's service area in this proceeding, the Commission cannot order Nucla-Naturita to make a filing to redefine its study area as well as address the sub-issue of whether disaggregation of its service/study area is appropriate. Despite this fact, NNTC's designation as an ETC in

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<sup>1</sup> In Docket No. 02M-199T, Nucla-Naturita chose not to disaggregate its study area (*i.e.*, it selected Path 1).

Nucla-Naturita's wire centers will be subject to the condition that Nucla-Naturita's study area must be redefined pursuant to 47 CFR § 54.207.<sup>2</sup>

15. We condition NNTC's ETC designation on the redefinition of Nucla-Naturita's study area to the wire center (or exchange) level and the FCC's concurrence in that redefinition. In addition, NNTC must provide, as a compliance filing, a copy of the FCC's decision that concurs with the Commission's redefinition of Nucla-Naturita's service area. If all other requirements have been met and Nucla-Naturita's study area is disaggregated and redefined to the wire center level, NNTC's ETC designation in the redefined Nucla-Naturita service areas will become effective immediately upon the filing of the compliance filing.

16. If the Commission decides to redefine (with or without disaggregation) Nucla-Naturita's study area, the Commission (or another party) must file with the FCC for the FCC's agreement to the redefinition of the study area.

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<sup>2</sup> This condition is identical in effect to that placed on WWC Holding Co.'s (Western Wireless) designation as an ETC and an EP in consolidated Dockets No. 00A-174T (*In the Matter of the Application of WWC Holding Co., Inc., for Designation as an Eligible Telecommunications Carrier Pursuant to 4 CCR 723-42-7*) and No. 00A-171T (*In the Matter of the Application of WWC Holding Co., Inc., for Designation as an Eligible Telecommunications Provider Pursuant to 4 CCR 723-42-7.8*) (Western Wireless proceeding). As pertinent here, Western Wireless sought ETC and EP designation in the service area of CenturyTel of Colorado, Inc. (CenturyTel), a rural ILEC. At the time, CenturyTel had not disaggregated and redefined its study area; and Western Wireless could not provide service to CenturyTel's entire study area. CenturyTel did not intervene in the Western Wireless proceeding.

Western Wireless, OCC, and Staff entered into a stipulation in which they proposed that Western Wireless be granted ETC designation pending FCC approval of the disaggregation and redefinition of CenturyTel's study area. The ALJ approved the stipulation in Decision No. R01-0019, Docket No. 00K-255T, mailed January 8, 2001. On exceptions, the Commission agreed that the redefinition of CenturyTel's study area was a necessary precondition to designating Western Wireless as an ETC/EP. The Commission did not approve the referenced portion of the stipulation, however, because the Commission found that the record in the Western Wireless proceeding contained insufficient evidence to permit the Commission to take the steps (*i.e.*, to make the findings) required by 47 CFR § 54.207. Decision No. C01-0476, Docket No. 00K-255T mailed May 4, 2001 at 25; Decision No. C01-0629 Docket No. 00K-255T mailed June 19, 2001 at 3 and 4. The Commission deferred Western Wireless's ETC and EP designations until the CenturyTel study areas were redefined by the Commission and the FCC concurred in the redefinition. Decision No. C03-0975, Docket No. 00K-255T, mailed September 2, 2003.

Given the factual similarities between the Western Wireless proceeding and the instant proceeding, the Commission finds persuasive the Commission discussion of this issue and the bases on which it deferred Western Wireless's designations. In addition, the Commission finds that the Commission's Western Wireless decisions provide support for the condition the Commission imposes on NNTC in the instant proceeding.

## **II. ORDER**

### **A. The Commission Orders That:**

1. The application for rehearing, reargument, and reconsideration to Decision No. C11-0551 (Commission Decision) filed by the Colorado Office of Consumer Counsel on June 13, 2011 is denied with clarification, consistent with the discussion above.

2. The grant of Eligible Telecommunications Carrier status to NNTC Wireless, LLC (NNTC) is conditioned on the Commission's redefinition of Nucla-Naturita Telephone Company's (Nucla-Naturita) study area to the wire center (or exchange) level and the Federal Communications Commission's (FCC) concurrence in that redefinition.

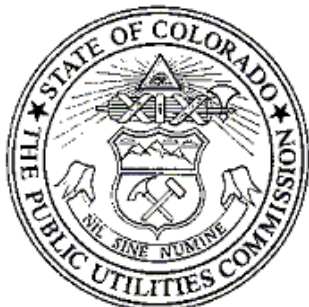
3. The grant of Eligible Telecommunications Carrier status to NNTC is conditioned upon NNTC's filing a copy of the FCC's decision that concurs in the Commission's redefinition of Nucla-Naturita's service area. This is a compliance filing.

4. The grant of Eligible Provider status to NNTC, is conditioned upon NNTC's meeting the conditions established for its Eligible Telecommunications Carrier designation.

5. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
July 6, 2011.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

JOSHUA B. EPEL

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JAMES K. TARPEY

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MATT BAKER

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Commissioners